

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TERESA PEREZ,	)	
	)	No. CV-07-3073-CI
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	AND DIRECTING ENTRY OF
MICHAEL J. ASTRUE,	)	JUDGMENT FOR DEFENDANT
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	

BEFORE THE COURT are cross-Motions for Summary Judgment. (Ct. Rec. 16, 19.) The parties have consented to proceed before a magistrate judge. (Ct. Rec. 8.) Attorney D. James Tree represents Plaintiff; Special Assistant United States Attorney Leisa Wolf represents Defendant. After reviewing the administrative record and the briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment and directs entry of judgment in favor of Defendant.

Teresa Perez (Plaintiff) protectively filed for disability Supplemental Security Income (SSI) benefits on December 18, 2003, alleging an onset date November 25, 2003. (Tr. 87.) She claims disability due to right lung abscess, pneumonia, and emphysema. (Tr. 66.) Following a denial of benefits and reconsideration, a hearing was held before Administrative Law Judge (ALJ) Mary Reed.

(Tr. 321-355.) The ALJ denied benefits; review was denied by the Appeals Council. (Tr. 5-7, 15-24.) This appeal followed. Jurisdiction is appropriate pursuant to 42 U.S.C. § 405(g).

#### STANDARD OF REVIEW

In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the court set out the standard of review:

The decision of the Commissioner may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Soc. Sec. Admin.* 169 F.3d 595, 599 (9th Cir. 1999).

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, although deference is owed to a reasonable construction of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

#### SEQUENTIAL PROCESS

Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the requirements necessary to establish disability:

Under the Social Security Act, individuals who are "under a disability" are eligible to receive benefits. 42 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any medically determinable physical or mental impairment" which prevents one from engaging "in any substantial gainful activity" and is expected to result in death or last "for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Such an impairment must result from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). The Act also provides that a claimant will be eligible for benefits only if his

1        impairments "are of such severity that he is not only  
2        unable to do his previous work but cannot, considering his  
3        age, education and work experience, engage in any other  
4        kind of substantial gainful work which exists in the  
5        national economy . . . ." 42 U.S.C. § 423(d)(2)(A). Thus,  
6        the definition of disability consists of both medical and  
7        vocational components.

8        In evaluating whether a claimant suffers from a  
9        disability, an ALJ must apply a five-step sequential  
10       inquiry addressing both components of the definition,  
11       until a question is answered affirmatively or negatively  
12       in such a way that an ultimate determination can be made.  
13       20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The  
14       claimant bears the burden of proving that [s]he is  
15       disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.  
16       1999). This requires the presentation of "complete and  
17       detailed objective medical reports of h[is] condition from  
18       licensed medical professionals." *Id.* (citing 20 C.F.R. §§  
19       404.1512(a)-(b), 404.1513(d)).

#### 20       **STATEMENT OF FACTS**

21       The facts of this case are set out in detail in the  
22       administrative record, and are briefly summarized here. Plaintiff  
23       was 44 years old at the time of the hearing held on June 21, 2006.  
24       She had a 7<sup>th</sup> or 8<sup>th</sup> grade education. (Tr. 72, 326.) She testified  
25       she had worked on her GED while in prison, but was unsure if her  
26       requirements were completed. (Tr. 326-27.) She was married with  
27       adult children. She testified she and her spouse lived in her  
28       sister's garage at the time of hearing. (Tr. 328.) In her written  
disability report, she stated she could walk for 10-15 minutes  
before needing to rest, could not stand, but could sit for eight  
hours. (Tr. 118.) She could bend and reach occasionally, do  
handling and fingering motions frequently, but could not lift or  
carry any weight. (Tr. 119.) Plaintiff stated she had past work  
experience as retail stocker/clerk, cook, fruit sorter and packer,  
and child caregiver. (Tr. 67, 343.) She testified she suffers pain  
and fatigue due to her lung problems and hypertension, has problems

1 gripping with her right hand and suffered a panic attack in the  
2 past. (Tr. 332, 335, 337, 340.)

3 Plaintiff also testified at the June 2006 hearing that she had  
4 been raped in January 2006. She stated since that time, she is  
5 limited in her social activities and suffers panic and anxiety  
6 attacks. (Tr. 327-29.) Her representative indicated Plaintiff had  
7 brief counseling after the sexual assault, but did not receive  
8 additional mental health treatment or medication because she lost  
9 medical coupons nine months before the hearing. (Tr. 325.)

#### 10 ADMINISTRATIVE DECISION

11 The ALJ concluded Plaintiff had not engaged in substantial  
12 gainful activity since the alleged onset date. (Tr. 17.) At step  
13 two, the ALJ found Plaintiff had the severe impairments of post  
14 carpal tunnel release, removal of ganglion cyst, chronic obstructive  
15 pulmonary disease and obesity. (*Id.*) She also found Plaintiff had  
16 non-severe impairments of hepatitis C, which the record indicated  
17 caused no limitations, and hypertension, which is controlled when  
18 Plaintiff is compliant with medication. (Tr. 18.) At step three,  
19 the ALJ found these impairments alone and in combination did not  
20 meet the requirements of 20 C.F.R. Part 404, Subp. P, Appendix 1  
21 (Listings). (*Id.*) At step four, ALJ Reed made the following  
22 residual functional capacity (RFC) finding:

23 [C]laimant has the residual functional capacity to perform  
24 light work. The claimant can lift 20 pounds occasionally,  
25 and frequently lift or carry 10 pounds. The claimant can  
26 sit for two hours and stand or walk for six hours in an  
27 eight-hour workday. The claimant would need normal  
28 breaks. The claimant should avoid working in environments  
with concentrated levels of fumes, dusts, gases and  
airborne particulates. The claimant can occasionally  
climb ladders, ropes, and scaffolds, and she can

1 occasionally kneel, crouch, crawl and stoop.<sup>1</sup> The  
2 claimant is also capable of performing sedentary work.  
3 The claimant has an eighth grade education. However,  
4 during the period from March of 2004 to October 1, 2005,  
5 the claimant was limited to lifting and carrying sedentary  
6 weights due to her carpal tunnel syndrome and ganglion  
7 cyst. During that time, in addition to the environmental  
8 and postural limitations noted above, the claimant could  
9 lift and carry up to 10 pounds occasionally, with no  
10 additional limitations.

11 (Tr. 18.) At step four, the ALJ found Plaintiff could not perform  
12 past relevant work. (Tr. 22.) At step five, the ALJ took  
13 vocational expert testimony and determined there were other  
14 unskilled sedentary and limited light jobs in the national economy  
15 Plaintiff could perform. She concluded Plaintiff was not under a  
16 "disability" as defined by the Social Security Act. (Tr. 23.)

### 17 ISSUES

18 The question presented is whether there is substantial evidence  
19 to support the ALJ's decision denying benefits and, if so, whether  
20 that decision is based on proper legal standards. Plaintiff asserts  
21 the ALJ erred when she (1) failed to fully develop the record; (2)  
22 improperly found Plaintiff not credible; (3) failed to consider lay  
23 testimony; and (4) did not meet the Commissioner's burden at step  
24 five. (Ct. Rec. 17 at 15.)

### 25 DISCUSSION

#### 26 1. Credibility

27 Plaintiff contends the ALJ erred when she failed to give  
28 adequate reasons for rejecting Plaintiff's testimony. (Ct. Rec. 17  
at 20.) The ALJ must engage in a two-step analysis in deciding

---

<sup>1</sup> The ALJ determined postural limitations were "reasonable"  
due to Plaintiff's obesity. (Tr. 21.)

1 whether to admit a claimant's subjective symptom testimony. *Smolen*  
2 *v. Chater*, 80 F.3d 1273, 1281 (9<sup>th</sup> Cir. 1996). Under the first step,  
3 the claimant must produce objective medical evidence of an  
4 underlying "impairment," and must show that the impairment, or a  
5 combination of impairments, "could reasonably be expected to produce  
6 pain or other symptoms." *Cotton v. Bowen*, 799 F.2d 1403, 1405 (9<sup>th</sup>  
7 Cir. 1986). Once the *Cotton* test is met, the ALJ must evaluate the  
8 credibility of the claimant. *Smolen*, 80 F.3d at 1281-82. If there  
9 is no affirmative evidence of malingering, the ALJ must provide  
10 "clear and convincing" reasons for rejecting Plaintiff's pain and/or  
11 symptom testimony. *Rollins v. Massanari*, 261 F.3d 853, 858 (9<sup>th</sup> Cir.  
12 2001); *Smolen*, 80 F.3d at 1283-84. The ALJ may consider the  
13 following factors when weighing the claimant's credibility:  
14 "[claimant's] reputation for truthfulness; inconsistencies either in  
15 [claimant's] testimony or between [his/her] testimony and [his/her]  
16 conduct; [claimant's] daily activities; [his/her] work record; and  
17 testimony from physicians and third parties concerning the nature,  
18 severity, and effect of the symptoms of which [claimant] complains."  
19 *Light v. Social Security Admin.*, 119 F.3d 789, 792 (9<sup>th</sup> Cir. 1997).  
20 If the ALJ's credibility finding is supported by substantial  
21 evidence in the record, the court may not engage in second-guessing.  
22 See *Morgan*, 169 F.3d at 600. If a reason given by the ALJ is not  
23 supported by the evidence, the ALJ's decision may be supported under  
24 a harmless error standard. *Stout v. Commissioner, Social Sec.*  
25 *Admin.*, 454 F.3d 1050, 1054-55 (9<sup>th</sup> Cir. 2006) (citing numerous cases  
26 in which the harmless error standard applied in social security  
27 cases); *Curry v. Sullivan*, 925 F.2d 1127, 1131 (9<sup>th</sup> Cir. 1990); *Booz*  
28 *v. Secretary of Health and Human Serv.*, 734 F.2d 1378, 1380 (9<sup>th</sup> Cir.

1 1984).

2 Here, after summarizing Plaintiff's testimony, the ALJ provided  
3 specific reasons for rejecting certain testimony, including  
4 inconsistencies between the record and Plaintiff's statements,  
5 inconsistencies within the record, and a lack of objective medical  
6 evidence to support the alleged severity. (Tr. 20-21.) In support  
7 of her credibility findings, she provided specific cites to treating  
8 physicians Drs. Santos and Barnaby's records showing that  
9 Plaintiff's lung condition resolved after her December 2003  
10 hospitalization. She also referenced a pulmonary function analysis  
11 dated May, 2005, that was normal. (Tr. 246-49, 259, 271, 302.)  
12 Rejecting Plaintiff's allegations of total disability due pulmonary  
13 problems (Tr. 19), ALJ Reed found Plaintiff had not seen a pulmonary  
14 doctor for treatment since April 2004, even though she had medical  
15 coverage. Failure to seek treatment is a "clear and convincing"  
16 reason to discount a claimant's credibility. *Fair v. Bowen*, 885  
17 F.2d 597, 603 (9<sup>th</sup> Cir. 1989). The ALJ also cited inconsistencies  
18 between Plaintiff's testimony and her written reports and statements  
19 to third parties regarding her ability to read and write, her  
20 ability to clean and cook, her consumption of alcohol, her ability  
21 to stand and walk and her statement that she could lift no weight at  
22 all. ( Tr. 19, 90-96, 109, 111.) She cited evidence that Plaintiff  
23 reported to her doctors she had a heart attack in July 2003, even  
24 though medical records from November 2003 and October 2004 confirmed  
25 no heart attack and Plaintiff admitted at the hearing that she had  
26 not had a heart attack. (Tr. 20, 149, 161, 230.) These are legally  
27 sufficient reasons for rejecting Plaintiff's testimony. *Light v.*  
28 *Social Security Admin.*, 119 F.3d 789, 792 (9<sup>th</sup> Cir. 1997).

1       Regarding Plaintiff's allegations of mental problems stemming  
2 from a rape in January 2006, Plaintiff's representative contends  
3 that the ALJ "implicitly accuse[d] the claimant of fabricating the  
4 rape incident simply because she had not reported it when it  
5 happened." On review, it is clear that the ALJ was not accusing the  
6 claimant of fabrication. Rather, the ALJ was complying with agency  
7 regulations and legal standards that require Plaintiff to produce  
8 objective medical evidence of a "severe medically determinable . .  
9 . impairment that meets the duration requirement." 20 C.F.R. §§  
10 416.908, 920 (a)(4)(ii). The objective evidence must show that the  
11 impairment could be expected to produce the subjective complaints  
12 before claimed symptoms are evaluated by the adjudicator. *Cotton*,  
13 799 F.2d at 1405 (first prong of *Cotton* test requires objective  
14 proof of impairment before a claimant's subjective symptoms are  
15 considered). In rejecting the unsupported allegations, the ALJ  
16 specifically found the record did not include evidence of mental or  
17 physical treatment for the reported rape, even though Plaintiff had  
18 seen a doctor in February 2006. (Tr. 20, 284-89.) Subjective  
19 statements alone do not meet the first prong of the *Cotton* test.  
20 Therefore, the ALJ did not err in disregarding Plaintiff's  
21 allegations of rape.

22       The record in its entirety supports the ALJ's specific findings  
23 and "clear and convincing" reasons for discounting Plaintiff's  
24 symptom testimony.

25   2.   ALJ's Duty to Develop the Record

26       The ALJ found no further basis to develop the record relating  
27 to Plaintiff's mental status. (Tr. 20.) Plaintiff argues the ALJ  
28 had a duty to order a consultative examination to explore the



1 possibility of mental impairments resulting from the rape reported  
2 by Plaintiff. (Ct. Rec. 17 at 17-18.) Plaintiff also contends a  
3 consultative examination should have been ordered with respect to  
4 Plaintiff's lung and hand impairments.

5 In Social Security proceedings, the burden of proof is on the  
6 claimant to prove the existence of a severe physical or mental  
7 impairment by providing medical evidence consisting of signs,  
8 symptoms, and laboratory findings; the claimant's own statement of  
9 symptoms alone will not suffice. 20 C.F.R. § 416.908. As a  
10 threshold to establishing an impairment, it is the claimant's  
11 responsibility to produce sufficient objective medical evidence of  
12 underlying impairment to show that the impairment, or a combination  
13 of impairments, "could reasonably be expected to produce pain or  
14 other symptoms." *Cotton*, 799 F.2d 1403.

15 Once medical evidence is provided by the claimant, the  
16 Regulations state the agency "will develop your complete medical  
17 history for at least the 12 months preceding the month in which you  
18 file your application unless there is a reason to believe that  
19 development of an earlier period is necessary." 20 C.F.R.  
20 § 404.1512 (d), 416.912 (d). An ALJ's duty to develop the record  
21 further is triggered "only when there is ambiguous evidence or when  
22 the record is inadequate for proper evaluation of evidence." *Mayes*  
23 *v. Massanari*, 276 F.3d 453, 4509-60 (9<sup>th</sup> Cir. 2001) (*citing*  
24 *Tonapetyan v. Halter*), 242 F.3d 1144, 1150 (9<sup>th</sup> Cir. 2001)). To  
25 further develop the record, the Commissioner may order consultative  
26 examinations at the agency's expense. However, the Commissioner has  
27 "broad latitude in ordering a consultative examination." *Diaz v.*  
28 *Secretary of Health and Human Services*, 898 F.2d 774, 778 (10<sup>th</sup> Cir.

1 1990). Consultative exams are purchased to resolve conflicts or  
2 ambiguities "if one exists." 20 C.F.R. § 404.1519a(2). However,  
3 as explained by the Tenth Circuit, the claimant has the burden to  
4 raise the issue, *i.e.*, there must be sufficient objective evidence  
5 in the record to suggest the "existence of a condition which could  
6 have a material impact on the disability decision." *Hawkins v.*  
7 *Chater*, 113 F.3d 1162, 1167 (10<sup>th</sup> Cir. 1997.) "Isolated and  
8 unsupported comments by the claimant are insufficient, by  
9 themselves, to raise the suspicion of the existence of a  
10 nonexertional impairment." *Id.*

11 Here, the ALJ specifically found the record did not warrant  
12 additional consultative examinations. She found Plaintiff did not  
13 seek treatment after the alleged rape and did not mention the rape  
14 when receiving treatment for her breast lump in February 2006. The  
15 ALJ reasoned that without a police report or treatment record, the  
16 evidence did not substantiate the attack. Finally, the ALJ found  
17 Plaintiff reported anxiety and panic attacks prior to the rape, and  
18 by Plaintiff's report, these conditions resolved themselves. (Tr.  
19 20, 278.) The record indicates anxiety was short term and  
20 situational. Plaintiff was neither prescribed medication for  
21 anxiety and/or stress, nor did she seek professional mental health  
22 treatment. (Tr. 71.) The ALJ concluded any limitations caused by  
23 anxiety or stress had minimal impact on Plaintiff's ability to work.  
24 These findings are supported reasonably by the record.

25 For example, Plaintiff was seen at the emergency room in  
26 October 2004, complaining of chest pains. She reported being  
27 emotionally distraught, but indicated similar symptoms in the past  
28 resolved "spontaneously." She was diagnosed with hypertension and

1 anxiety, which the treating physician characterized as a "panic"  
2 reaction. (Tr. 279.) Thereafter, her providers did not report  
3 ongoing mental health symptoms, and there is no record that  
4 Plaintiff sought treatment before or after the reported rape in  
5 January 2006. As discussed above, the ALJ gave clear and  
6 convincing reasons for discounting the severity of Plaintiff's  
7 subjective symptom complaints. Further, under the Regulations,  
8 Plaintiff's statements alone are not sufficient to establish mental  
9 impairments or trigger the development of the record. 20 C.F.R. §  
10 416.908. The ALJ did not err in determining a consultative  
11 psychological examination was unwarranted.

12 Regarding Plaintiff's physical condition, the medical reports  
13 before the ALJ are neither ambiguous nor conflicting. The ALJ  
14 properly summarized and explained the weight given to treating  
15 physicians, all of whom consistently opined Plaintiff could do  
16 sedentary and/or light work.<sup>2</sup> (Tr. 21-22.) For example, treating  
17 physician N. Santos, M.D., opined Plaintiff could do sedentary work  
18 in March 2004, with no restrictions on handling or reaching. Dr.  
19 Wayne Hansen opined after one visit that Plaintiff could do  
20 sedentary work in April 2005, with certain restrictions on handling

---

22 <sup>2</sup> The ALJ properly noted that Plaintiff could not work for 90  
23 days while she was hospitalized for and recovering from respiratory  
24 problems in December 2003. (Tr. 22, 243-44.) The record further  
25 indicates treating pulmonary specialist, J. J. Barany, M.D., was  
26 recommending Plaintiff continue her physical exercise of walking in  
27 March 2004, when he also found her blood pressure was "okay" and her  
28 pneumonia had resolved. (Tr. 22, 248.)

1 and reaching, prior to her hand surgery. (Tr. 294-97.) After the  
2 hand surgery, on August 30, 2005, she was given a home exercise  
3 treatment plan to maximize her range of motion. (Tr. 304-05.)  
4 Plaintiff's treating orthopaedic surgeon, John Atkinson, M.D.,  
5 opined no restrictions were expected to exist after her right hand  
6 surgery. (Tr. 109.) He also noted Plaintiff missed "multiple  
7 appointments" after September 2005. Medical notes from Plaintiff's  
8 visit to Dr. Santos' clinic and the emergency room in February 2006  
9 do not mention complaints of wrist pain or limitations. (Tr. 277,  
10 284.) It was reasonable for the ALJ to infer Plaintiff did not need  
11 further examination or treatment relating to her hand impairment.  
12 Significantly, the record in its entirety shows Plaintiff's treating  
13 physicians did not opine Plaintiff's impairments would preclude work  
14 activities. As there was no conflicting and/or ambiguous medical  
15 evidence regarding limitations caused by Plaintiff's physical  
16 impairments, the ALJ was not required to further develop the record.

17 3. Lay Testimony

18 Plaintiff argues the ALJ erred when she did not properly reject  
19 the lay witness statements included in six letters from friends and  
20 relatives "testifying that Ms. Perez underwent a marked personality  
21 change and exhibited drastic changes in daily and personal habits  
22 following a rape in January of 2006." (Ct. Rec. 17 at 19.) This  
23 argument is without merit.

24 The lay testimony identified was never considered by the ALJ  
25 before she rendered her opinion on October 16, 2006. The letters  
26 were written between October 29 and October 31, 2006, and sent to  
27 the Appeals Council by Plaintiff's representative on November 1,  
28 2006. (Tr. 310.) The record is clear that these letters were not

1 included in the record before the ALJ; therefore, consideration of  
2 this evidence was not possible. (Tr. 310-320.)

3 As discussed above, these letters are considered new evidence  
4 and are part of the record before the reviewing court. However,  
5 Plaintiff did not provide evidence of a medically determinable  
6 mental impairment, and lay witness statements are insufficient to  
7 establish an impairment. Therefore, remand to consider this new  
8 evidence is not required.

9 It is further noted that alleged mental impairments stemming  
10 from the reported January 2006 rape would not have met the duration  
11 requirements during the time at issue.<sup>3</sup> This is not to say,  
12 however, that Plaintiff is precluded from submitting the identified  
13 lay witness statements as evidence when filing a new claim based on  
14 medically determinable mental and physical impairments stemming from  
15 the January 2006 sexual assault.

16 Regarding statements from Plaintiff's daughter and friend, the  
17 ALJ specifically referenced their statements in her credibility  
18 findings. (Tr. 20.) She found these statements indicated Plaintiff  
19 was capable of reading, writing, cleaning her home everyday and  
20 cooking her meals, contrary to Plaintiff's testimony. These

---

21  
22 <sup>3</sup> For an impairment to be meet or equal a Listing, the  
23 impairment must last or be expected to last for a continuous period  
24 of 12 months. 20 C.F.R. § 416.905. The record should document all  
25 pertinent symptoms, signs and laboratory findings as well as  
26 prescribed treatment, and the response to treatment in terms of  
27 changes in symptoms. *Social Security Ruling (SSR) 82-52*  
28 (Documentation).

1 findings are supported by the record. (Tr. 90-96, 109, 111.)

2 4. Step Five

3 Plaintiff contends the hypothetical question posed to the  
4 vocational expert at step five did not include all of her  
5 limitations and, therefore, the vocational expert's opinion she  
6 could perform other work is not supported by substantial evidence.  
7 (Ct. Rec. 17 at 20-21.) As discussed above, the ALJ did not err in  
8 her evaluation of the evidence and Plaintiff's credibility. It is  
9 well settled that the ALJ is "responsible for determining  
10 credibility, resolving conflicts in medical testimony and for  
11 resolving ambiguities," in these proceedings. *Richardson*, 402 U.S.  
12 at 400; *Andrews*, 53 F.3d at 1039; SSR 96-8p. The final  
13 determination regarding a claimant's ability to perform basic work  
14 is the sole responsibility of the Commissioner. 20 C.F.R. §  
15 416.946; SSR 96-5p (RFC assessment is an administrative finding of  
16 fact reserved to the Commissioner). Further, where ALJ's  
17 determination is a rational interpretation of the evidence, the  
18 court will not substitute its judgment for that of the Commissioner.  
19 *Tackett*, 180 F.3d at 1097.

20 The ALJ's RFC determination is supported by the record in its  
21 entirety and represents a reasonable interpretation of the evidence.  
22 The hypothetical propounded to the vocational expert included  
23 postural and exertional limitations for a limited light level and  
24 sedentary level of work. (Tr. 348-352.) It follows that the ALJ  
25 properly relied on the vocational expert testimony that Plaintiff  
26 retained the capacity to perform unskilled light and sedentary jobs  
27 identified by the vocational expert that existed in significant  
28 numbers in the national economy. *Bayliss v. Barnhart*, 427 F.3d

1 1211, 1218 (9<sup>th</sup> Cir. 2005); *Magallanes v. Bowen*, 881 F.2d, 747 (9<sup>th</sup>  
2 Cir. 1989) (hypothetical properly limited to include restrictions  
3 supported by substantial evidence in record).

4 **CONCLUSION**

5 The ALJ's findings are supported by substantial evidence and  
6 free of legal error. Accordingly,

7 **IT IS ORDERED:**

8 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 16** ) is  
9 **DENIED.**

10 2. Defendant's Motion for Summary Judgment dismissal (**Ct.**  
11 **Rec. 19**) is **GRANTED.**

12 3. The District Court Executive is directed to file this  
13 Order and provide a copy to counsel for Plaintiff and Defendant.  
14 The file shall be **CLOSED** and judgment entered for Defendant.

15 DATED October 9, 2008.

16  
17 S/ CYNTHIA IMBROGNO  
18 UNITED STATES MAGISTRATE JUDGE  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28